

## ARLO Deadline Calendar for the Week of March 26, 2018

### NEW CASES, NOTICES OF CITIZEN SUIT, and PETITIONS NEW CASES

#### NEW CASES

- ***California Communities Against Toxics v EPA***, No. 18-XXXX (D. C. Cir.) (petition for review of January 25, 2018 Wehrum memorandum entitled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act” (commonly referred to as the “once-in-always-in” memo)) (Scott Jordan)

#### NOTICES OF CITIZEN SUIT

- NOI dated March 23, 2018 for failure to enforce the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills filed on behalf of the States of California, Illinois, Maryland, New Mexico, Oregon, Rhode Island, Vermont, the California Air Resources Board, and Pennsylvania Department of Environmental Protection (Elliott Zenick)

#### PETITIONS

#### NEW DECISIONS and SETTLEMENTS

### UPCOMING LITIGATION and COURT-ORDERED AND RELATED DEADLINES

#### UPCOMING LITIGATION DEADLINES

- ,248) (Mar. 28, 2016) (Jonathan Skinner-Thompson)
- 03/26 Administrative Index  
***Sierra Club v. EPA***, No. 18-1038 (D.C. Cir) (petition for review of EPA’s final action in In the Matter of PacifiCorp Energy - Hunter Power Plant, Emery County, Utah) at 82 Fed. Reg. 58196 (Dec. 11, 2017)) (John Krallman)
- 03/29 Motion to Dismiss (amended complaint, MTD on original complaint filed 03/01/18)  
***Clean Air Council v. United States***, Case No. 2:17-cv-04977-PD (E.D. Pa) (Constitutional and federal public trust claims brought by environmental organization and two minors regarding climate “rollbacks” since January 1, 2017) (Dan Conrad)
- 03/29 Opposition to Motion to Enforce  
***Sierra Club v. McCarthy***, No. 1:15cv1555 (D.D.C.) (Complaint alleging EPA's failure to perform a non-discretionary duty to promulgate a FIP within two years of EPA's partial disapproval of Louisiana’s Regional Haze SIP (Matthew Marks)
- 03/30 Status Report  
***Utility Air Regulatory Group v. EPA***, No. 12-1664 (petition for review of EPA's limited approval and limited disapproval of West Virginia's Regional Haze SIP) (Lea Anderson)

- 04/02 Status Report  
**Cliffs Natural Resources, Inc. v. EPA**, No. 13-3573 (8th Cir.) (Petition for review of EPA's final action titled "Approval and Promulgation of Air Quality Implementation Plans, States of Michigan and Minnesota, Regional Haze" at 78 Fed. Reg. 59,825 (Sept. 30, 2013)) (Matthew Marks)
- 04/02 Oral Argument  
**NEDACAP v. EPA**, No. 16-1344 (D.C. Cir.) (Petition for review of the Regional Consistency Regulations) (Karen Bianco)
- 04/02 Status Report  
**State of West Virginia, et al. v. EPA**, No. 15-1363 (D.C. Cir.) (CPP CHALLENGE - LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." at 80 Fed. Reg. 64; 662 (October 23, 2015) (Scott Jordan)
- 04/02 Status Report  
**United States Steel Corporation v. EPA**, No. 18-1249 (8th Cir.) (Petition for review of EPA's final action entitled: "Air Plan Approval, Minnesota and Michigan, Regional Haze SIP, FIP for Regional Haze; Final Action on Petitions for Reconsideration." 82 Fed. Reg. 57, 125 (Dec. 4, 2017)) (Matthew Marks)
- 04/03 Motions to Govern Further Proceedings  
**National Waste & Recycling Association, et al. v. EPA**, No. 16-1372 (DC Cir.) (petition for review of EPA's final rule entitled "Standards of Performance for Municipal Solid Waste Landfills." at 81 Fed. Reg. 59,332 (Aug. 29, 2016)) (Karen Palmer)
- 04/03 Response to Court Order Requesting Supplemental Information  
**Air Alliance Houston v. EPA**, No. 17-1155 (petition for review of EPA's final action to delay the effective to the January 2017 amendments to the Risk Management Program regulations) (filed motion for extension to 4/6).
- 04/03 Status Report  
**EIP, et al. v. Pruitt**, No. 1:16-cv-01643-CRC (D.D.C.) (action claiming that EPA failed to perform a mandatory duty to respond to a petition to object to a Title V permit) (the "Morgantown" case) (Charles Starrs)
- 04/06 Status Report  
**CBD, et al. v. EPA**, No. 3:17-cv-07209 (N.D. Cal.) (alleging EPA's failure to make findings of failure to submit for five 2012 PM2.5 NAAQS nonattainment areas) (Jonathan Skinner-Thompson)
- 04/09 Answer  
**State of New York, et al. v. EPA**, No. 1:18-cv-00406 (S.D. NY) (EPA's obligation to promulgate FIPs for Illinois, Michigan, Pennsylvania, Virginia, and West Virginia addressing the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS) (Daniel Schramm)

- 04/09 Status Report  
**Murray Energy Corporation v. EPA**, No. 15-1385 (D.C. Cir.) (Petition for review of EPA’s final action titled “National Ambient Air Quality Standards for Ozone” at 80 Fed. Reg. 65292 (October 26, 2015)) (Melina Williams)
- 04/12 Status Report  
**State of Texas, et al. v. EPA**, No. 17-60088 (5th Cir.) (Petition for review of final action entitled “Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County,” 81 Fed. Reg. 89,870 (Dec. 13, 2016) (Andrea Carrillo)
- 04/13 EPA Reply to Plaintiff Response to EPA Motion to Dismiss  
**Small Retailers Coalition v. EPA**, No. 7:17-cv-00121 (N.D. TX) (for EPA’s noncompliance with sections 603 and 604 of the RFA in issuing the 2017 RFS standards and for failure to annually review the point of obligation of the RFS) (Ryland Li)
- 04/16 Procedural Motions  
**Crossett Concerned Citizens for Environmental Justice, et al. v. EPA**, No. 17-1257 (D.C. Cir.) (petition for review of EPA’s final action titled “National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills” 82 Fed. Reg. 47,3 28 (Oct. 11,2017)) (Scott Jordan)
- 04/17 Motion to Govern Further Proceedings  
**Compsys, Inc. v. EPA**, No. 15-1334 (DC Cir.) (Petition for review of EPA’s final rule titled “Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes Under the Significant New Alternatives Policy Program, Part II” at 80 FR 42870 (July 20, 2015) (Jan Tierney)
- 04/19 Status Report  
**American Petroleum Institute v. EPA**, No. 12-1405 (D.C. Cir.) (Petitions for review of EPA’s 2012 oil and gas NESHAP revision based on residual risk and technology review (Amy Branning)
- 04/19 Status Report  
**Environmental Committee of the Florida Electric Power Coordinating Group, Inc., et al. v. EPA**, No. 15-1239 (D.C. Cir.) (petition for review of EPA’s final rule entitled “State Implementation Plans: Response to Petition for Rulemaking, Restatement Update of EPA’s SSM Policy Applicable to SIPs, Findings of Substantial Inadequacy, and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction” at 33839-33985 Fed. Reg. June 12, 2015) (Karen Bianco)
- 04/19 Motion to Govern Further Proceedings  
**Mexichem Fluor; Inc., et al. v. EPA**, No. 17-1024 (D.C. Cir.) (challenge by a foreign chemical supplier to the 2016 Section 612 Significant New Alternatives Policy (“SNAP”) Rule which; among other things; changed the listing of certain high global warming potential substitutes for ozone-depleting substances from acceptable to unacceptable) (Jan Tierney)

- 04/19 Status Report  
***Murray Energy Corporation v. EPA***, No. 16-1127 (DC Cir.) (petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units at 81 Fed. Reg. 24,420 (April 25, 2016)) (Karen Bianco, Kaytrue Ting)
- 04/20 Motions to Govern Future Proceedings  
***Mossville Environmental Action Now, et al. v. EPA***, No. 12-1263 (D.C. Cir.) (Petition for review of EPA's final action entitled "National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production," 77 Fed. Reg. 22,848 (April 17, 2012)) (Susmita Dubey)
- 04/20 Reply Brief  
***Center for Biological Diversity, et al. v. EPA***, No. 1:17-cv-02002 (D. D.C.) (deadline suit alleging EPA's failure to issue a FIP for Alabama and Mississippi to address conflicts of interest for state boards under CAA section 128) (Geoffrey Wilcox)
- 04/23 EPA Brief  
***Coffeyville Resources, et al., v. EPA***, Nos. 17-1044, 1045, 1047, 1049, 1051, 1052 (D.C. Cir.) (Petition for review of 2017 RFS annual standards rule) (Roland Dubois)
- 04/25 Status Report  
***Truck Trailer Manufacturers Association v. EPA***, No. 16-1430 (DC Cir.) (Petition for review of EPA's final rule "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2" 81 FR 73478 (Oct. 25, 2016)) (Mark Kataoka)
- 04/26 Dispositive Motions  
***Sierra Club v. EPA***, No. 18-1038 (D.C. Cir) (petition for review of EPA's final action in *In the Matter of PacifiCorp Energy - Hunter Power Plant, Emery County, Utah*) at 82 Fed. Reg. 58196 (Dec. 11, 2017)) (John Krallman)
- 04/26 Administrative Index  
***Sierra Club v. EPA***, No. 18-9507 (10<sup>th</sup> Cir) (petition for review of EPA's final action in *In the Matter of PacifiCorp Energy - Hunter Power Plant, Emery County, Utah*) at 82 Fed. Reg. 58196 (Dec. 11, 2017)) (John Krallman)
- 04/30 Status Report  
***State of Texas, et al. v. EPA***, No. 17-1021 (D.C. Cir.) (Petition for review of EPA's final action titled "Protection of Visibility: Amendments to Requirements for State Plans," 82 Fed. Reg. 3078 (Jan. 10, 2017)) (Matthew Marks)
- 04/30 Status Report  
***Samuel Masias, et al. v. EPA***, No. 16-1314 (DC Cir.) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard-Round 2) 81 Fed. Reg. 45039 (July 12, 2016) (Andrea Carrillo)

- 04/30 Oral Argument  
**Finger Lakes Zero Waste Coalition, Inc. v. EPA**, No. 16-3420 (2nd Cir.) (petition for review of EPA's final action regarding the Order denying petition requesting that the Administrator reopen Title V operating permit issued to Seneca Energy for the Ontario County Landfill Gas-to-Energy Facility" at 81 Fed. Reg. 62,123 (September 8, 2016)) (Andrea Carrillo)
- 05/02 Status Report on severed No. 17-1227 issue  
**Samuel Masias, et al. v. EPA**, No. 16-1314 (DC Cir.) (Petition for review of the Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard-Round 2 at 81 Fed. Reg. 45039 (July 12, 2016)) (Andrea Carrillo)
- 05/02 Status Report  
**Environmental Integrity Project, et al. v. EPA**, Report status of response to Pasadena Refinery petition (Charles Starrs)
- 05/07 Status Report  
**Biogenic CO<sub>2</sub> Coalition v. EPA**, No. 16-1358 (DC Cir.) (challenge to endangerment finding for GHG from aircraft) (Melina Williams)
- 05/08 EPA Response and Cross Motion for Summary Judgment  
**State of New York, et al. v. EPA**, No. 1:18-cv-00406 (S.D. NY) (EPA's obligation to promulgate FIPs for Illinois, Michigan, Pennsylvania, Virginia, and West Virginia addressing the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS) (Daniel Schramm)
- 05/10 Status Report  
**National Alliance of Forest Owners v. EPA**, No. 15-1478 (DC Cir.) (CPP BIOMASS LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." at 80 Fed. Reg. 64,662 (October 23, 2015)) (Nora Greenglass)
- 05/15 Status report detailing the status of all final designations for the 2015 ozone NAAQS  
**American Lung Association, et al. v. EPA**, No. 17-1172 (D.C. Cir.) (petition for review of EPA's final action extending the deadline for promulgating initial area designations for the 2015 ozone national ambient air quality standards, at 82 FR 29,246 (June 28, 2017)) (Karen Bianco)
- 05/16 Status report  
**American Bakers Association v. EPA**, No. 17-1264 (D.C. Cir.) (petition for review of Yeast Manufacturing RTR) (Nora Greenglass)
- 05/21 Status Report  
**Kaiser Aluminum Corporation v. EPA**, No. 15-1423 (DC Cir.) (petition for review of EPA's "National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production," at 80 Fed. Reg. 56,700 (September 18, 2015)) (Emily Seidman)

- 05/22 EPA Brief  
**Energy Developments v. EPA**, No. 17-4074 (6<sup>th</sup> Cir.) (Petition for review of EPA decision to deny RFS registration for biogas producer selling biogas for non-transportation uses) (Roland Dubois) (Possible extension of deadline being negotiated)
- 05/28 Status Report  
**National Alliance of Forest Owners, et al. v. EPA**, No. 10-1209 (D.C. Cir.) (NAFO/AFPA PETITION RE BIOGENIC EMISSIONS UNDER TAILORING RULE - Challenge to EPA's treatment of Biogenic Emissions in Tailoring Rule, 75 Fed. Reg. 31,514 (June 3, 2010)) (Nora Greenglass)
- 05/29 EPA Response Brief  
**Sierra Club v. EPA**, No. 16-1158 (D.C. Cir.) (Petition for judicial review of monitoring rule revisions, 81 Fed. Reg. 17,248) (Mar. 28, 2016) (Jonathan Skinner-Thompson)

#### **UPCOMING COURT-ORDERED AND RELATED DEADLINES**

- 04/02 Grant or deny a petition to object to a proposed title V operating permit for the Baytown Refinery (TX).  
**Environmental Integrity Project v. Pruitt**, No. 1:17-cv-1440 (D.D.C.) (court order) (Emily Seidman)
- 04/06 Sign a notice of final rulemaking setting forth final decision in review of primary NOx NAAQS pursuant to CD  
**Center for Biological Diversity, et al. v. EPA**, No. 3:16cv3796 (ND CA) (failure to timely review, revise and promulgate the Air Quality Criteria for Sulfur Oxides and the NAAQS for Sulfur Dioxide and Nitrogen Oxides as may be appropriate) (Melina Williams)
- 04/08 Sign notice of final action on Connecticut Section 126 petition  
**Connecticut v. Pruitt**, No. 3:17-cv-00796-WWE (D. Conn.) (Abi Vijayan)
- 05/01 Grant or deny a petition to object to a proposed title V operating permit for the Pasadena Refinery (TX)  
**Environmental Integrity Project v. Pruitt**, No. 1:17-cv-1441 (D.D.C.) (court order) (Emily Seidman)
- 05/25 Sign notice of proposed rulemaking concerning review of the primary SOx NAAQS pursuant to CD  
**Center for Biological Diversity, et al. v. EPA**, No. 3:16cv3796 (ND CA) (failure to timely review, revise and promulgate the Air Quality Criteria for Sulfur Oxides and the NAAQS for Sulfur Dioxide and Nitrogen Oxides as may be appropriate) (Melina Williams)
- 06/01 Grant or deny a petition to object to a proposed title V operating permit for the Motiva-Port Arthur Refinery (TX)  
**Environmental Integrity Project v. Pruitt**, No. 1:17-cv-1442 (D.D.C.) (court order) (John Krallman)

07/02 Grant or deny a petition to object to a proposed title V operating permit for the Welsh Power Plant (TX)  
**Environmental Integrity Project v. Pruitt**, No. 1:17-cv-1443 (D.D.C.) (court order) (Howard Hoffman)

#### CASES and MAJOR MOTIONS AWAITING DECISION

- **State of West Virginia, et al. v. EPA**, No. 15-1363 (D.C. Cir.) CPP CHALLENGE - LEAD CASE - Petition for review of EPA's final rule titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." (Scott Jordan) (argued September 27, 2016)
- **Finger Lakes Zero Waste Coalition, Inc. v. EPA**, No. 16-3420 (2nd Cir.) (petition for review of EPA's final action regarding the Order denying petition requesting that the Administrator reopen Title V operating permit issued to Seneca Energy for the Ontario County Landfill Gas-to-Energy Facility) (Andrea Carrillo) (oral argument set for April 30, 2018)
- **Environmental Integrity Project, et al. v. EPA**, No. 1:17cv1233 (D. DC) (for failure to timely grant or deny a petition to object to the proposed Title V Operating Permit for the Raven coal-fired power plant in Maryland) (Howard Hoffman) (briefing completed on Sept. 22, 2017)
- **Sierra Club v. EPA**, No. 15-1487 (Brick/Clay Ceramics MACT litigation) - Petition for review of EPA Final Rule entitled "NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing" (80 FR 65470 (Oct. 26, 2015))
- **United States Steel Corporation v. EPA**, No. 16-2668 (8th Cir.) (Petition for review of EPA's final action titled "Air Plan Approval, Minnesota and Michigan, Revision to 2013 Taconite Federal Implementation Plan Establishing BART for Taconite Plants," 81 Fed. Reg. 21,672 (Apr. 12, 2016)) (Matthew Marks) (argued Nov. 15, 2017)
- **UARG v. EPA**, No. 12-1342 (D.C. Cir.) (challenge to EPA's determination that CSAPR provides for greater reasonable progress than BART and EPA's limited disapproval of regional haze SIPs relying on CAIR) (Lea Anderson) (argued Nov. 16, 2017)
- **Community In-Power and Development Association, et al. v. EPA**, No. 1:16cv1074 (D DC) (failure to issue standards or final residual risk determinations under CAA section 112 for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years) (Jan Tierney) (argued November 30, 2017)
- **Ergon-West Virginia, Inc. v. EPA**, No. 17-1839 (4th Cir.) (petitions for review of EPA's final action: Denial of Request for Extension of Small Refinery Temporary Exemption Under the Renewable Fuel Standards Program for Ergon-West Virginia, Inc.'s Newell, WV Refinery) (Susan Stahle) (argued December 7, 2017)
- **United States of America, et al. v. Volkswagen AG, et al.** No. 16-17060 (9<sup>th</sup> Cir.) (Denial of Intervention) (Mark Kataoka) (argued December 7, 2017)
- **United States v. U.S. District Court of Oregon and Juliana, et al.**, No. 17-71692 (9th Cir.) (petition for writ of mandamus over denial of motion to dismiss in *Juliana v. United States*, a case alleging multi-agency constitutional and public trust violations arising from actions and inactions on climate change) (Zach Pilchen, Melina Williams, Karen Palmer) (argued December 11, 2017)
- **American Lung Association, et al. v. EPA**, No. 17-1172 (D.C. Cir.) (petition for review of EPA's final action extending the deadline for promulgating initial area designations for the 2015 ozone

national ambient air quality standards, at 82 FR 29,246 (June 28, 2017)) (Karen Bianco) (case is fully brief as of September 5, 2017)

- ***Sierra Club v. EPA***, No. 1:16-cv-02461 (D.D.C.) (Deadline Suit concerning Clean Air Act obligations related to Commercial and Industrial Solid Waste Incinerators (CISWI) and Other Solid Waste Incinerators (OSWI) source categories) (Karen Bianco) (awaiting court's decision on whether to hear oral argument)
- ***Montana Env't'l Info. Ctr. v. EPA***, No. 16-71933 (9<sup>th</sup> Cir.) (Petition for review of EPA's final rule entitled: "Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead; 2008 Ozone; 2010 NO<sub>2</sub>; 2010 SO<sub>2</sub>; and 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards; Montana") (Geoff Wilcox, Melina Williams) (argued February 14, 2018)
- ***U.S. v. Luminant***, No. 17-10235, (5<sup>th</sup> Cir.) (addressing statute of limitations and availability of injunctive relief in context of NSR enforcement case against two power plants in Texas that allegedly modified without obtaining NSR permits) (Melina Williams) (argued March 5, 2018)
- ***Air Alliance Houston, et al. v. EPA***, No. 17-1155, (D.C. Cir.) (petition for review of EPA's final action titled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Further Delay of Effective Date." at 82 Fed. Reg. 27, 133 (June 14, 2017)) (Jonathan Averback) (argued March 16, 2018)
- ***Natural Resources Defense Council, et al. v. EPA***, No. 16-1413, (D.C. Cir.) (petition for review of EPA's 2016 Exceptional Events Rule) (Emily Seidman) (argued March 22, 2018)
- ***State of Delaware Department of Natural Resources & Environmental Control v. EPA***, No. 17-1644 (3<sup>rd</sup> Cir.) (petition for review of EPA's final action entitled, "Extension of Deadline for Action on the November 28, 2016 Section 126 Petition from Delaware," 82 Fed. Reg. 7,695 (Jan. 23, 2017) (Abi Vijayan) (argued March 6, 2018)
- ***State of Maryland. v. EPA and Chesapeake Bay Foundation et. al. v. EPA***, 1:17-cv-02873-JKB (consolidated with 1:17 cv-2939) (D. MD) (failure to act on Maryland's section 126 petition regarding multiple EGUs located in five states) (Abi Vijayan) (case is fully briefed as of March 8, 2018)